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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 WINGSAIL HOLDINGS, LLC, a
Washington Corporation, and YUNFEI
12 "KRISTY" BAI, an individual,

13 Plaintiffs,

14 vs.

15 ANDREW POLSKY, an individual, and
SEFED, a California Corporation, and
16 DOES 1 through 10,

17 Defendants.
18
19

Case No. 8:23-CV-02398-JWH-DFM

Judge: Hon. John W. Holcomb

**DEFENDANTS ANDREW POLSKY
AND SEFED'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Date Action Filed: August 23, 2024
Trial Date: None Set

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Defendants ANDREW POLSKY and SEFED (“Defendants”), by and through their attorneys, Rutan & Tucker, LLP, answer the second amended complaint (“SAC”) of plaintiffs WINGSAIL HOLDINGS, LLC (“Wingsail”) and YUNFEI “KRISTY” BAI (“Bai”, and collectively with Wingsail, “Plaintiffs”) as follows:

I. JURISDICTION AND VENUE

1. Defendants admit that Defendants are domiciled California and that this Court has subject matter jurisdiction over this action. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 1 of the SAC, and on that basis deny the remaining allegations of paragraph 1.

2. Defendants admit that venue is proper in this district, as Defendants both reside in this judicial district. Except as expressly admitted herein, Defendants deny the allegations of paragraph 2 of the SAC.

II. NATURE OF THE ACTION

3. Defendants admit that on or about July 31, 2018, Wingsail entered into a “Management and Investments Agreement” with MCAP Holdings, LLC (“MCAP”) and that the document speaks for itself. A copy of the Management and Investments Agreement is attached hereto as Exhibit A. Defendants further admit that on or about October 13, 2018, Wingsail and MCAP amended the Management and Investments Agreement via the “First Amendment to the Management and Investments Agreement” and that the document speaks for itself. A copy of the First Amendment to the Management and Investments Agreement is attached hereto as Exhibit B. Defendants further admit that that on or about July 22, 2019, Wingsail; Syzygy Management Group, LLC (“Syzygy”); Pan Pacific Strategies, LLC (“Pan Pacific”); and Medify Management, LLC (“Medify”) executed the “Alter Operating Agreement” (which was retroactively effective back to July 27, 2018) and that the document speaks for itself. A copy of the Alter Operating Agreement is attached hereto as Exhibit C. Defendants further admit that on or

1 about July 16, 2019, Wingsail and SEFED entered into a “Promissory Note” and
2 “Loan and Pledge Agreement” and that the documents speak for themselves.
3 Copies of the Promissory Note and Loan and Pledge Agreement are respectively
4 attached hereto as Exhibits D and E. Defendants further admit that thereafter
5 Wingsail defaulted on the Promissory Note and Loan and Pledge Agreement and
6 that on or about April 6, 2020, SEFED and Wingsail executed an “Agreement to
7 Accept Collateral in Full Satisfaction of Obligations” that was “effective December
8 31, 2019” and the document speaks for itself. A true and correct copy of the
9 Agreement to Accept Collateral in Full Satisfaction of Obligations is attached hereto
10 as Exhibit F. Except as expressly admitted herein, Defendants deny the allegations
11 of paragraph 3 of the SAC.

12 **III. PARTIES**

13 4. Defendants lack knowledge or information sufficient to form a belief
14 about the truth of the allegations in paragraph 4 of the SAC, and on that basis deny
15 the allegations of paragraph 4.

16 5. Defendants lack knowledge or information sufficient to form a belief
17 about the truth of the allegations in paragraph 5 of the SAC, and on that basis deny
18 the allegations of paragraph 5.

19 6. Defendants admit the allegations of paragraph 6 of the SAC.

20 7. Defendants admit the allegations of paragraph 7 of the SAC.

21 8. Defendants deny the allegations of paragraph 8 of the SAC.

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IV. GENERAL ALLEGATIONS

9. Defendants admit the allegations of paragraph 9 of the SAC.

10. Defendants admit that they were introduced to Plaintiffs in or around April of 2018 by Fu-Shen “Max” Chang (“Chang”), that Chang was a manager of MCAP at this time, and that Polsky was seeking capital investments for a behavioral and mental healthcare and drug rehabilitation business. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 10 of the SAC, and on that basis deny the remaining allegations of paragraph 10 of the SAC.

11. Defendants admit that that on or about July 22, 2019, Wingsail; Syzygy; Pan Pacific; and Medify executed the Alter Operating Agreement (which was retroactively effective back to July 27, 2018) and that the document speaks for itself. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief about the what Plaintiffs were “expecting” and on that basis denies all such allegations in paragraph 11 of the SAC. Except as expressly admitted herein, Defendants deny the allegations of paragraph 11 of the SAC.

12. Defendants admit that that on or about July 22, 2019, Wingsail; Syzygy; Pan Pacific; and Medify executed the Alter Operating Agreement (which was retroactively effective back to July 27, 2018) and that the document speaks for itself. Except as expressly admitted herein, Defendants deny the allegations of paragraph 12 of the SAC.

13. Defendants admit that that on or about July 22, 2019, Wingsail; Syzygy; Pan Pacific; and Medify executed the Alter Operating Agreement (which was retroactively effective back to July 27, 2018) and that the document speaks for itself. Defendants further admit that by the end of March 2019, Wingsail had invested ~\$730,000 into Alter under the Alter Operating Agreement. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to

1 form a belief regarding what Plaintiffs “based” their investments on or “relied”
2 upon, and on that basis denies all such allegations in paragraph 13 of the SAC.
3 Except as expressly admitted herein, Defendants deny the allegations of paragraph
4 13 of the SAC.

5 14. Defendants admit that on August 16, 2019, Wingsail and SEFED
6 entered into the Promissory Note and Loan and Pledge Agreement and that the
7 documents speak for themselves. Defendants further admit that at this time, Polsky
8 controlled SEFED. Except as expressly admitted herein, Defendants deny the
9 allegations of paragraph 14 of the SAC. .

10 15. Defendants admit that on August 16, 2019, Wingsail and SEFED
11 entered into the Promissory Note and Loan and Pledge Agreement, and that the
12 documents speak for themselves. Defendants further admit that Wingsail defaulted
13 on said agreements. Except as expressly admitted herein, Defendants deny the
14 allegations of paragraph 15 of the SAC.

15 16. Defendants admit that while SEFED may have been willing to work
16 with Wingsail to help it avoid defaulting on the Promissory Note and Loan and
17 Pledge Agreement, the Promissory Note and Loan and Pledge Agreement were fully
18 integrated agreements that could only be modified via a written and signed
19 amendment (which never occurred). Except as expressly admitted herein,
20 Defendants lack knowledge or information sufficient to form a belief regarding what
21 Plaintiffs were “concerned” about and on that basis denies all such allegations in
22 paragraph 16 of the SAC. Except as expressly admitted herein, Defendants deny the
23 allegations of paragraph 16 of the SAC.

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1 17. Defendants admit that in or about October 2019, Wingsail transferred
2 approximately \$200,000 to repay a loan Wingsail had taken from Jordan Mallin
3 (“Mallin”) in April 2019. Except as expressly admitted herein, Defendants lack
4 knowledge or information sufficient to form a belief regarding what Plaintiffs
5 “understood” or “believed” this money would be used for and on that basis denies
6 all such allegations in paragraph 17 of the SAC. Except as expressly admitted
7 herein, Defendants deny the allegations of paragraph 17 of the SAC.

8 18. Defendants admit that in total, Wingsail invested ~\$731,840 into Alter.
9 Except as expressly admitted herein, Defendants deny the allegations of paragraph
10 18 of the SAC.

11 19. Defendants deny that the October 2019 transfer of \$199,980 was for
12 Alter, but allege that it was instead to repay a loan Wingsail had taken from Mallin
13 in April 2019. Defendants admit that while SEFED may have been willing to work
14 with Wingsail to help it cure its defaults on Promissory Note and Loan and Pledge
15 Agreement, the Promissory Note and Loan and Pledge Agreement were fully
16 integrated agreements that could only be modified via a written and signed
17 amendment (which never occurred). Except as expressly admitted herein,
18 Defendants deny the allegations of paragraph 19 of the SAC.

19 20. Defendants admit that while SEFED may have been willing to work
20 with Wingsail to help it cure its defaults on the Promissory Note and Loan and
21 Pledge Agreement, the Promissory Note and Loan and Pledge Agreement were fully
22 integrated agreements that could only be modified via a written and signed
23 amendment (which never occurred). Except as expressly admitted herein,
24 Defendants lack knowledge or information sufficient to form a belief regarding how
25 changes in the ownership of Alter would have affected Bai’s immigration status and
26 on that basis denies all such allegations in paragraph 20 of the SAC. Except as
27 expressly admitted herein, Defendants deny the allegations of paragraph 20 of the
28 SAC.

21. Defendants admit that on or about October 8, 2020, Bai texted Polsky “How is the Business?” and Polsky texted Bai “Business is going ok” but that raising money and producing additional revenue opportunities “will make the existing business more profitable so we can return capital to you hopefully sooner than later.” Defendants further admit that Polsky texted Bai “Do you intend to file your e2?” Except as expressly admitted herein, Defendants deny the allegations of paragraph 21 of the SAC.

22. Defendants admit that on or about October 8, 2020, Polsky texted Bai that “we have to do two things for you[.] Have to pay you back, and get you your E2 if you want it” and that Bai texted Polsky “Yes.” Defendants further admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Defendants further admit Alter has not returned the money that Wingsail invested in it. Except as expressly admitted herein, Defendants deny the allegations of paragraph 22 of the SAC.

23. Defendants admit that while SEFED may have been willing to work with Wingsail to help it cure its defaults on the Promissory Note and Loan and Pledge Agreement, the Promissory Note and Loan and Pledge Agreement were fully integrated agreements that could only be modified via a written and signed amendment (which never occurred). Except as expressly admitted herein, Defendants deny the allegations of paragraph 23 of the SAC.

24. Defendants admit that on or about August 31, 2021 Polsky stated in an email to Chang that SEFED was still willing to work with Wingsail help it cure its defaults on the Promissory Note and Loan and Pledge Agreement so that it could ultimately reacquire its membership interest in Alter. Defendants further admit that shortly thereafter, Polsky and Chang had a phone call to the same effect. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief regarding Chang’s statements to Plaintiffs or what effect those

1 statements had on Plaintiffs, and on that basis deny all such allegations in paragraph
2 24 of the SAC. Except as expressly admitted herein, Defendants deny the
3 allegations of paragraph 24 of the SAC.

4 25. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
5 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
6 was “effective December 31, 2019” and that the document speaks for itself. Except
7 as expressly admitted herein, Defendants deny the allegations of paragraph 25 of the
8 SAC.

9 26. Defendants admit that Wingsail’s October 2019 transfer of \$199,980
10 was to repay a loan Wingsail had taken from Mallin in April 2019. Except as
11 expressly admitted herein, Defendants lack knowledge or information sufficient to
12 form a belief regarding what Plaintiffs are “[j]aware” of, and on that basis denies all
13 such allegations in paragraph 26 of the SAC. Except as expressly admitted herein,
14 Defendants deny the allegations of paragraph 26 of the SAC.

15 27. Defendants deny the allegations of paragraph 27 of the SAC.

16 28. Defendants admit that Wingsail defaulted on the Promissory Note and
17 Loan and Pledge Agreement. Defendants further admit that on or about April 6,
18 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full
19 Satisfaction of Obligations that was “effective December 31, 2019” and that the
20 document speaks for itself. Except as expressly admitted herein, Defendants lack
21 knowledge or information sufficient to form a belief regarding Bai’s immigration
22 status, how that status may have changed under different hypothetical
23 circumstances, and what motivated her investments in Alter, and on that basis denies
24 all such allegations in paragraph 28 of the SAC. Except as expressly admitted
25 herein, Defendants deny the allegations of paragraph 28 of the SAC.

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1 **V. DISCOVERY RULE & FRAUDULENT CONCEALMENT**

2 29. Defendants admit that while SEFED may have been willing to work
3 with Wingsail to help it cure its defaults on the Promissory Note and Loan and
4 Pledge Agreement, the Promissory Note and Loan and Pledge Agreement were fully
5 integrated agreements that could only be modified via a written and signed
6 amendment (which never occurred). Defendants further admit that on or about
7 April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in
8 Full Satisfaction of Obligations that was “effective December 31, 2019” and that the
9 document speaks for itself. Except as expressly admitted herein, Defendants lack
10 knowledge or information sufficient to form a belief regarding Plaintiffs’ beliefs,
11 impressions, or intent and on that basis denies all such allegations in paragraph 29 of
12 the SAC. Except as expressly admitted herein, Defendants deny the allegations of
13 paragraph 29 of the SAC.

14 30. Defendants deny the allegations of paragraph 30 of the SAC.

15 **VI. RELATION TO PRIOR CLAIMS**

16 31. Defendants admit Polsky and Change have been involved in a separate
17 lawsuit *Polsky v. Chang, et al.*, Case No. 8:23-CV-00225-CJC-ADS(x). Except as
18 expressly admitted herein, Defendants deny the allegations of paragraph 31 of the
19 SAC.

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **Breach of Fiduciary Duty**

23 **(By Plaintiffs Against Polsky)**

24 32. Defendants incorporate by reference each of their responses in the
25 proceeding paragraphs as though fully set forth herein.

26 33. Defendants deny the allegations of paragraph 33 of the SAC.

27 34. Defendants admit that on or about July 31, 2018, Wingsail entered into
28 Management and Investments Agreement with MCAP and that the document speaks

1 for itself. Except as expressly admitted herein, Defendants lack knowledge or
2 information sufficient to form a belief regarding Plaintiffs' understandings, beliefs,
3 or intent and on that basis denies all such allegations in paragraph 34 of the SAC.
4 Except as expressly admitted herein, Defendants deny the allegations of paragraph
5 34 of the SAC.

6 35. Defendants admit that on August 16, 2019, Wingsail and SEFED
7 entered into the Promissory Note and Loan and Pledge Agreement and that the
8 documents speak for themselves. Except as expressly admitted herein, Defendants
9 lack knowledge or information sufficient to form a belief regarding Plaintiffs'
10 understandings, beliefs, or what they relied upon and on that basis denies all such
11 allegations in paragraph 35 of the SAC. Except as expressly admitted herein,
12 Defendants deny the allegations of paragraph 35 of the SAC.

13 36. Defendants deny the allegations of paragraph 36 of the SAC.

14 37. Defendants admit that on August 16, 2019, Wingsail and SEFED
15 entered into the Promissory Note and Loan and Pledge Agreement and that the
16 documents speak for themselves. Defendants further admit that while SEFED may
17 have been willing to work with Wingsail to help it cure its defaults on the
18 Promissory Note and Loan and Pledge Agreement, the Promissory Note and Loan
19 and Pledge Agreement were fully integrated agreements that could only be modified
20 via a written and signed amendment (which never occurred). Except as expressly
21 admitted herein, Defendants deny the allegations of paragraph 37 of the SAC.

22 38. Defendants deny the allegations in paragraph 38 of the SAC.

23 39. Defendants deny the allegations in paragraph 39 of the SAC.

24 40. Defendants deny the allegations of paragraph 40 of the SAC.

25 41. Defendants deny the allegations of paragraph 41 of the SAC.

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SECOND CLAIM FOR RELIEF

Constructive Fraud (Cal. Civ. Code § 1573)

(By Plaintiffs Against All Defendants)

42. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

43. Defendants deny the allegations of paragraph 43 of the SAC.

44. Defendants lack sufficient information and knowledge to form a belief regarding the allegations of paragraph 44 of the SAC, and on that basis deny the allegations of paragraph 44 of the SAC.

45. Defendants admit that on or about July 31, 2018, Wingsail entered into Management and Investments Agreement with MCAP and that the document speaks for itself. Defendants further admit that at this time, Polsky was the president of MCAP. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief regarding Bai's "overarching purpose" for investing in Alter and what her immigration status would be under various hypothetical scenarios, and on that basis denies all such allegations in paragraph 45 of the SAC. Except as expressly admitted herein, Defendants deny the allegations of paragraph 45 of the SAC.

46. Defendants admit that on August 16, 2019, Wingsail and SEFED entered into the Promissory Note and Loan and Pledge Agreement and that the documents speak for themselves. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief regarding what Plaintiffs understood, believed, or relied on and on that basis denies all such allegations in paragraph 46 of the SAC. Except as expressly admitted herein, Defendants deny the allegations of paragraph 46 of the SAC.

47. Defendants deny the allegations of paragraph 47 of the SAC.

48. Defendants deny the allegations of paragraph 48 of the SAC.

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1 49. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
2 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
3 was “effective December 31, 2019” and that the document speaks for itself.
4 Defendants further admit that while SEFED may have been willing to work with
5 Wingsail to help it cure its defaults on the Promissory Note and Loan and Pledge
6 Agreement—the Promissory Note, the Loan and Pledge Agreement, and the
7 Agreement to Accept Collateral in Full Satisfaction of Obligations were fully
8 integrated agreements that could only be modified via a written and signed
9 amendment (which never occurred). Except as expressly admitted herein,
10 Defendants deny the allegations of paragraph 49 of the SAC.

11 50. Defendants deny the allegations in paragraph 50 of the SAC.

12 51. Defendants deny the allegations of paragraph 51 of the SAC.

13 52. Defendants admit that Wingsail’s October 2019 transfer of \$199,980
14 was made to repay a loan Wingsail had taken out from Mallin in April of 2019.
15 Except as expressly admitted herein, Defendants deny the allegations of paragraph
16 52 of the SAC.

17 53. Defendants deny the allegations of paragraph 53 of the SAC.

18 54. Defendants lack sufficient knowledge regarding Bai’s immigration
19 status, how her immigration status would change under various hypothetical
20 scenarios, and Plaintiffs’ purposes for investing in Alter and on that basis deny such
21 allegations of paragraph 54 of the SAC. Except as expressly admitted herein,
22 Defendants deny the allegations of paragraph 54 of the SAC.

23 55. Defendants deny the allegations of paragraph 55 of the SAC.

24 56. Defendants deny the allegations of paragraph 56 of the SAC.

25 57. Defendants deny the allegations of paragraph 57 of the SAC.

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THIRD CLAIM FOR RELIEF

Fraud (Cal. Civ. Code § 1710)

(By Plaintiffs Against All Defendants)

58. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

59. Defendants admit that Polsky owns and controls SEFED. Defendants further admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Defendants further admit that while SEFED may have been willing to work with Wingsail to help it cure its defaults on the Promissory Note and Loan and Pledge Agreement—the Promissory Note, the Loan and Pledge Agreement, and the Agreement to Accept Collateral in Full Satisfaction of Obligations were fully integrated agreements that could only be modified via a written and signed amendment (which never occurred). Except as expressly admitted herein, Defendants deny the allegations of paragraph 59 of the SAC.

60. Defendants deny the allegations of paragraph 60 of the SAC.

61. Defendants deny the allegations of paragraph 61 of the SAC.

62. Defendants deny the allegations of paragraph 62 of the SAC.

63. Defendants admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Except as expressly admitted herein, Defendants lack sufficient knowledge to form a belief regarding Bai’s immigration status, how her immigration status would change under various hypothetical scenarios, and Plaintiffs’ purposes for investing in Alter and on that basis deny such allegations of paragraph 63 of the SAC. Except as expressly admitted herein, Defendants deny the allegations of paragraph 63 of the SAC.

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64. Defendants deny the allegations of paragraph 64 of the SAC.

65. Defendants deny the allegations of paragraph 65 of the SAC.

66. Defendants deny the allegations of paragraph 66 of the SAC.

FOURTH CLAIM FOR RELIEF

Promissory Estoppel/Waiver

(By Plaintiffs Against All Defendants)

67. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

68. Defendants admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself.

Defendants further admit that while SEFED may have been willing to work with Wingsail to help it cure its defaults on the Promissory Note and Loan and Pledge Agreement—the Promissory Note, the Loan and Pledge Agreement, and the Agreement to Accept Collateral in Full Satisfaction of Obligations were fully integrated agreements that could only be modified via a written and signed amendment (which never occurred). Except as expressly admitted herein, Defendants deny the allegations of paragraph 68 of the SAC

69. Defendants admit that on August 16, 2019, Wingsail and SEFED entered into the Promissory Note and Loan and Pledge Agreement and that the documents speak for themselves. Except as expressly admitted herein, Defendants lack knowledge or information sufficient to form a belief regarding what Plaintiffs understood, believed, or relied on and on that basis denies all such allegations in paragraph 69 of the SAC. Except as expressly admitted herein, Defendants deny the allegations of paragraph 69 of the SAC.

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1 70. Defendants admit that under the Management and Investments
2 Agreement, MCAP was required to “Maintain the assets and businesses of the
3 Company in good standing, order and operating condition.” Except as expressly
4 admitted herein, Defendants deny the allegations of paragraph 70 of the SAC.

5 71. Defendants deny the allegations in paragraph 71 of the SAC.

6 72. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
7 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
8 was “effective December 31, 2019” and that the document speaks for itself.

9 Defendants further admit that while SEFED may have been willing to work with
10 Wingsail to help it cure its defaults on the Promissory Note and Loan and Pledge
11 Agreement—the Promissory Note, the Loan and Pledge Agreement, and the
12 Agreement to Accept Collateral in Full Satisfaction of Obligations were fully
13 integrated agreements that could only be modified via a written and signed
14 amendment (which never occurred). Except as expressly admitted herein,
15 Defendants deny the allegations of paragraph 72 of the SAC.

16 73. Defendants deny the allegations of paragraph 73 of the SAC.

17 74. Defendants deny the allegations of paragraph 74 of the SAC.

18 75. Defendants admit that Wingsail’s October 2019 transfer of \$199,980
19 was made to repay a loan Wingsail had taken out from Mallin in April of 2019.
20 Except as expressly admitted herein, Defendants deny the allegations of paragraph
21 75 of the SAC.

22 76. Defendants deny the allegations of paragraph 76 of the SAC.

23 77. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
24 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
25 was “effective December 31, 2019” and that the document speaks for itself. Except
26 as expressly admitted herein, Defendants lack sufficient knowledge to form a belief
27 regarding Bai’s immigration status, how her immigration status would change under
28 various hypothetical scenarios, and Plaintiffs’ purposes for investing in Alter and on

1 that basis deny such allegations of paragraph 77 of the SAC. Except as expressly
2 admitted herein, Defendants deny the allegations of paragraph 77 of the SAC.

3 78. Defendants deny the allegations of paragraph 78 of the SAC.

4 79. Defendants deny the allegations of paragraph 79 of the SAC.

5 80. Defendants deny the allegations of paragraph 80 of the SAC.

6 **FIFTH CLAIM FOR RELIEF**

7 **Rescission and Declaratory Relief**

8 **(By Plaintiffs Against All Defendants)**

9 81. Defendants incorporate by reference each of their responses in the
10 proceeding paragraphs as though fully set forth herein.

11 82. Defendants deny the allegations of paragraph 82 of the SAC.

12 83. Defendants deny the allegations of paragraph 83 of the SAC.

13 84. Defendants deny the allegations of paragraph 84 of the SAC.

14 85. Defendants deny the allegations of paragraph 85 of the SAC.

15 **SIXTH CLAIM FOR RELIEF**

16 **Conversion**

17 **(By Plaintiffs Against All Defendants)**

18 86. Defendants incorporate by reference each of their responses in the
19 proceeding paragraphs as though fully set forth herein.

20 87. Defendants admit that that on or about July 22, 2019, Wingsail;
21 Syzygy; Pan Pacific; and Medify executed the Alter Operating Agreement (which
22 was retroactively effective back to July 27, 2018) and that the document speaks for
23 itself. Defendants further admit that on or about April 6, 2020, SEFED and
24 Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of
25 Obligations that was “effective December 31, 2019” and that the document speaks
26 for itself. Except as expressly admitted herein, Defendants deny the allegations of
27 paragraph 87 of the SAC.

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1 88. Defendants deny the allegations of paragraph 88 of the SAC.

2 89. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
3 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
4 was “effective December 31, 2019” and that the document speaks for itself. Except
5 as expressly admitted herein, Defendants deny the allegations of paragraph 89 of the
6 SAC.

7 90. Defendants deny the allegations of paragraph 90 of the SAC.

8 91. Defendants deny the allegations of paragraph 91 of the SAC.

9 92. Defendants deny the allegations of paragraph 92 of the SAC.

10 93. Defendants deny the allegations of paragraph 93 of the SAC.

11 **SEVENTH CLAIM FOR RELIEF**

12 **Theft – Cal. Pen. Code § 4296(c)**

13 **(By Plaintiffs Against All Defendants)**

14 94. Defendants incorporate by reference each of their responses in the
15 proceeding paragraphs as though fully set forth herein.

16 95. Defendants deny the allegations of paragraph 95 of the SAC.

17 96. Defendants admit that on or about April 6, 2020, SEFED and Wingsail
18 executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that
19 was “effective December 31, 2019” and that the document speaks for itself. Except
20 as expressly admitted herein, Defendants deny the allegations of paragraph 96 of the
21 SAC.

22 97. Defendants deny the allegations of paragraph 97 of the SAC.

23 98. Defendants deny the allegations of paragraph 98 of the SAC.

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EIGHTH CLAIM FOR RELIEF

Restoration of Property Pursuant to Cal. Civ. Code § 1712

(By Bai Against All Defendants)

99. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

100. Defendants deny the allegations of paragraph 100 of the SAC.

101. Defendants admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Except as expressly admitted herein, Defendants deny the allegations of paragraph 101 of the SAC.

102. Defendants deny the allegations of paragraph 102 of the SAC.

103. Defendants deny the allegations of paragraph 103 of the SAC.

NINTH CLAIM FOR RELIEF

Unjust Enrichment/ Constructive Trust

(By Plaintiffs Against All Defendants)

104. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

105. Defendants admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Except as expressly admitted herein, Defendants deny the allegations of paragraph 105 of the SAC.

106. Defendants deny the allegations of paragraph 106 of the SAC.

107. Defendants deny the allegations of paragraph 107 of the SAC.

108. Defendants deny the allegations of paragraph 108 of the SAC.

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TENTH CLAIM FOR RELIEF

Accounting

(By Plaintiffs Against All Defendants)

109. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

110. Defendants admit that on or about April 6, 2020, SEFED and Wingsail executed an Agreement to Accept Collateral in Full Satisfaction of Obligations that was “effective December 31, 2019” and that the document speaks for itself. Except as expressly admitted herein, Defendants deny the allegations of paragraph 110 of the SAC.

111. Defendants deny the allegations of paragraph 111 of the SAC.

112. Defendants deny the allegations of paragraph 112 of the SAC.

113. Defendants deny the allegations of paragraph 113 of the SAC.

114. Defendants deny the allegations of paragraph 114 of the SAC.

115. Defendants deny the allegations of paragraph 115 of the SAC.

116. Defendants deny the allegations of paragraph 116 of the SAC.

117. Defendants deny the allegations of paragraph 117 of the SAC.

ELEVENTH CLAIM FOR RELIEF

Unfair, Unlawful, and Fraudulent Business Practices

(Cal. Bus. & Prof. Code § 17200 et seq.)

(By Plaintiffs Against All Defendants)

118. Defendants incorporate by reference each of their responses in the proceeding paragraphs as though fully set forth herein.

119. Defendants admit the allegations of paragraph 119 of the SAC.

120. Defendants deny the allegations of paragraph 120 of the SAC.

121. Defendants deny the allegations of paragraph 121 of the SAC.

122. Defendants deny the allegations of paragraph 122 of the SAC.

123. Defendants deny the allegations of paragraph 123 of the SAC.

1 124. Defendants deny that Plaintiffs are entitled to any relief whatsoever by
2 way of the SAC.

3 125. Defendants deny the allegations of paragraph 125 of the SAC.

4 **PLAINTIFFS' PRAYER FOR RELIEF**

5 1. Defendants deny that Plaintiffs are entitled to any relief whatsoever by
6 way of the SAC.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Claim for Relief)**

10 1. Defendants are informed and believe, and based thereon allege, that the
11 SAC and the claims for relief asserted therein fail to state facts sufficient to
12 constitute any claim for relief.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Statute of Limitations)**

15 2. Defendants are informed and believe, and based thereon allege, that the
16 SAC and the claims for relief asserted therein are barred by the applicable statute of
17 limitations.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Laches)**

20 3. Defendants are informed and believe, and based thereon allege, that the
21 SAC and the claims for relief asserted therein are barred by the doctrine of laches.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Good Faith)**

24 4. Defendants are informed and believe, and based thereon allege, that the
25 SAC and the claims for relief asserted therein are barred because Defendants'
26 conduct was reasonable, justified, in good faith, and/or innocent.

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FIFTH AFFIRMATIVE DEFENSE

(No Causation)

5. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs' damages, if any, were not caused by Defendants.

SIXTH AFFIRMATIVE DEFENSE

(Intervening Causes)

6. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs' damages, if any, were caused by the intervening and separate conduct of third parties.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

7. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs lack standing.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Privity)

8. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs and Defendants lack privity.

NINTH AFFIRMATIVE DEFENSE

(Estoppel and Waiver)

9. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrines of estoppel and wavier.

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TENTH AFFIRMATIVE DEFENSE

(Indispensable Party)

10. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by Plaintiffs' failure to name indispensable parties.

ELEVENTH AFFIRMATIVE DEFENSE

(Indemnity)

11. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs' damages, if any, were caused by the superseding conduct of third parties and, accordingly, Defendants are entitled to total or partial offset from said third parties.

TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

12. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

(Plaintiffs' Conduct)

13. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs' voluntary conduct pertaining to matters alleged in the SAC were the actual and proximate cause of all damages alleged in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Contributory Fault and/or Comparative Fault)

14. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrines of contributory fault and/or comparative fault.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Conduct of Plaintiffs' Other Agents)

15. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because the acts of Plaintiffs' agents with respect to the matters alleged in the SAC were the actual and proximate cause of all damages alleged in the SAC, and Plaintiffs are bound by the acts of those agents.

SIXTEENTH AFFIRMATIVE DEFENSE

(Fraud)

16. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the fraud of others, including Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

17. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the business judgment rule.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Breach)

18. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by Plaintiffs' contractual breaches.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

19. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by Plaintiffs' own failure to mitigate their alleged damages.

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TWENTIETH AFFIRMATIVE DEFENSE

(Consent)

20. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Plaintiffs consented to, or otherwise authorized, all of the conduct about which it complains.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Active Tortious Conduct)

21. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the active and primary tortious conduct, intentional acts, and/or negligent acts of others, including Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure of Conditions Precedent)

22. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the failure of conditions precedent.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Setoff and Recoupment)

23. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrines of setoff and recoupment.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Offset)

24. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Defendants are entitled to a total or partial offset against Plaintiffs' damages, if any.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Duty)

25. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because there is not a sufficient relationship between Plaintiffs and Defendants to give rise to Defendants owing any duties to Plaintiffs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Frustration of Purpose)

26. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrine of frustration of purpose.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Full Performance)

27. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Defendants fully performed all obligations required of them.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Performance Excused)

28. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred because Defendants' obligations, if any, were excused.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Novation)

29. Defendants are informed and believe, and based thereon allege, that the SAC and the claims for relief asserted therein are barred by the doctrine of novation.

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RESERVATION OF RIGHTS

Defendants assert the above defenses based on their present knowledge, which is based on their investigation to date and an absence of discovery. Defendants reserve the right to supplement or amend their Answer and to add defenses that may be supported by facts revealed through discovery and/or their investigation.

PRAYER

WHEREFORE, Defendants pray for judgment as follows:

1. That the SAC be dismissed in its entirety with prejudice;
2. That Defendants be awarded their costs of suit incurred herein;
3. That Defendants be awarded their attorneys' fees incurred herein to the extent allowed by law; and
4. That the Court grant such other relief as it deems just and proper.

Dated: August 1, 2025

RUTAN & TUCKER, LLP

By: /s/ Alejandro S. Angulo
Alejandro S. Angulo
Joelle Leib
Attorneys for Defendants
ANDREW POLSKY, and SEFED